



testimony (Dkt. No. 690). On April 11, 2019, the Court granted the parties' motion and entered the fourth amended scheduling order (Dkt. No. 692), pursuant to which Plaintiffs' reply will be served on June 7, 2019.

**The Parties' Motions to Exclude Expert Testimony.** On March 15, 2019, along with their opposition to Plaintiffs' renewed motion for class certification, Defendants Mastercard, Visa, and Discover served a motion to exclude Plaintiffs' class certification expert ("Defendants' Motion to Exclude"). Pursuant to the operative fourth amended scheduling order, Plaintiffs' opposition to Defendants' Motion to Exclude is due June 7, 2019, and Defendants' reply is due July 12, 2019. Dkt. No. 692. Additionally, any motion by Plaintiffs to exclude Defendants' class certification expert is due June 7, 2019, with Defendants' opposition due July 12, 2019, and Plaintiffs' reply due August 13, 2019. *Id.* Any oral argument on these motions will be heard concurrent with the hearing on Plaintiffs' renewed motion for class certification. *Id.*

**Discover's Motion to Compel Arbitration.** In light of the Court's denial of Plaintiffs' motion for class certification on March 11, 2018 (Dkt. No. 644), and consistent with Discover's position as set forth in previous Joint Status Reports, it is Discover's position that it is proper to wait until the Court has decided Plaintiffs' renewed motion for class certification before moving to compel arbitration against the approximately 1,200 putative class members with which Discover has valid, enforceable arbitration agreements.

## **II. STATUS OF DISCOVERY**

**Defendants' Production of Transaction Data.** In early 2018, Plaintiffs requested that Defendants provide transaction data for the time period through and including September 30, 2017. After a lengthy meet and confer process, Visa, Mastercard, and Discover largely agreed to produce specific data as requested and AmEx agreed to supplement its prior production of the

transaction data for a sample of merchants and produce a series of monthly reports that reflect FLS chargebacks in an aggregate form. Mastercard and Discover completed their productions prior to the filing of the renewed motion for class certification. Visa and AmEx completed their productions later that month.

**Additional Fact Discovery.** Plaintiffs identified concerns and questions regarding AmEx's second privilege log for withheld documents and supplemental production of documents and have met and conferred with AmEx regarding these issues. AmEx produced additional documents on January 25, 2019. Upon further communications with counsel for AmEx, Plaintiffs have determined that no additional fact discovery will be necessary.

**Third-Party Discovery.** During the fact discovery period, Plaintiffs issued subpoenas to numerous third parties, including those that Plaintiffs believe have served as acquirers and/or processors with respect to merchant transactions identified in Defendants' production of transaction data. To date, Plaintiffs have received all anticipated third party data productions.

Respectfully submitted this 1st day of May, 2019, by:

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*s/ George C. Aguilar*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all registered parties and attorneys of record.

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